



Commodity Futures Trading Commission

Office of Public Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
202.418.5080

Statement

Closing Statement of Chairman Gary Gensler, Meeting of the Commodity Futures Trading Commission

January 14, 2010

I would once again like to thank the Mr. Berkovitz, Mr. Sherrod and all the members of the staff for a thorough and well-researched recommendation and all the hard work that went into it. Today's meeting will conclude with the Commission's first public vote on one of its rules in eight years. I look forward to additional public meetings of the Commission and the transparency to the public that they provide.

The CFTC is charged with a significant responsibility to ensure the fair, open and efficient functioning of futures markets. Our duty is to protect both market participants and the American public from fraud, manipulation and other abuses. Central to these responsibilities is our duty to protect the public from the undue burdens of excessive speculation that may arise, including those from concentration in the marketplace.

The CFTC does not set or regulate prices. Rather, the Commission is directed to ensure that commodity markets are fair and orderly. It is for that reason that I support the staff's recommended rulemaking regarding position limits in the energy markets and exemptions for swap dealer risk management transactions.

The CFTC is directed in its original 1936 statute to set position limits to protect against the burdens of excessive speculation, including those caused by large concentrated positions. In that law – the Commodity Exchange Act (CEA) – Congress said that the CFTC “shall” impose limits on trading and positions as necessary to eliminate, diminish or prevent the undue burdens that may come as a result of excessive speculation. We are directed by statute to act in this regard to protect the American public.

A transparent and consistent playing field for all physical commodity futures should be the foundation of our regulations. Thus, position limits should be applied consistently to all markets and trading platforms and exemptions to them also should be consistent and well-defined.

While we currently set and enforce position limits on certain agriculture products, we do not for energy markets. Though there are some differences between energy markets

and agricultural markets, those distinctions do not suggest to me that the federal government should set position limits on one and not the other.

When the CFTC set position limits in the past, the agency sought to ensure that the markets were made up of a broad group of market participants with a diversity of views. At the core of our obligations is promoting market integrity, which the agency has historically interpreted to include ensuring markets do not become too concentrated.

Position limits help to protect the markets both in times of clear skies and when there is a storm on the horizon. In 1981, the Commission said that “the capacity of any contract market to absorb the establishment and liquidation of large speculative positions in an orderly manner is related to the relative size of such positions, i.e., the capacity of the market is not unlimited.” I believe this is still true today.

The futures exchanges also have obligations with regard to the setting of position limits. As was explored in our summer hearings, though, the Commodity Futures Modernization Act (CFMA) changed the exchanges' obligations. They have to comply with a core principle that speaks to protecting against manipulation or congestion, “especially during trading in the delivery month.” These core principles do not explicitly require the exchanges to set position limits to guard against the burdens of excessive speculation. The CEA, in section 4a, though, left the obligations of the CFTC unchanged with regard to setting position limits to protect against the possible burdens of excessive speculation. Our governing statute importantly distinguishes between these two distinct, but sometimes related, public policy goals – protecting against manipulation and protecting against possible burdens of excessive speculation. The CFMA clearly established that the exchanges had to address the first while the CFTC had a broader mandate to address both. Though the CFTC had in 1992 first allowed exchanges to establish accountability regimes, it was only in 2001 that they did so in lieu of position limits in the energy markets.

The past eight years have provided further evidence as to the difference. Accountability levels are regularly and repeatedly exceeded. In fact, they are neither stop signs nor even yield signs for market participants. As reviewed at our summer hearings, in the 12 months between July 2008 and June 2009, accountability levels for individual months were exceeded in the four main energy contracts by 69 different traders, some exceeding the levels during every trading day in the period.

The staff recommendation builds upon the Commission's experience and previous guidance in setting position limits, particularly for agricultural commodities.

- Limits are set across the same contract month groupings: all-months-combined (AMC); single-month; and spot-month.
- Limits apply to aggregate positions in futures and options combined.
- There are exemptions for bona fide hedging transactions involving commodity inventory hedges and anticipatory purchases or sales of the commodity.

In addition, the proposed energy limits incorporate CFTC guidance to exchanges in setting speculative position limits:

- The basic formula for the level of the all-months-combined limit is the same—10% of the first 25,000 contracts of open interest plus 2.5% of open interest over 25,000 contracts.
- The approach to setting the level of the spot-month limit in the physical delivery contracts is the same—25% of the estimated deliverable supply.

The proposed energy Federal limits builds upon the Commission's experience in several ways:

- The proposed energy limits would be responsive to the size of the market and administratively reset on an annual basis, rather than remaining unchanged until a new rule is issued.
- The proposal extends contract aggregation by applying all-months-combined and single-month energy speculative position limits both to classes of contracts (all physical delivery or cash settled contracts in a commodity at a reporting market) and to positions held across all reporting markets.
- The proposed energy limits aggregate positions at the owner level rather than permitting disaggregation for independent account controllers.

I believe that the staff recommendation is a measured and balanced approach to setting position limits in the energy markets.

In addition to resetting position limits in the energy futures and options markets, the proposed rulemaking both addresses exemptions for *bona fide* hedgers and establishes a consistent framework for certain swap dealer risk management exemptions. The Commission and the exchanges currently grant relief from agriculture and energy position limits to swap dealers on a case-by-case basis via staff no-action letters or similar methods at the exchanges. The proposed rule would, for the first time, bring uniformity to swap dealer exemptions. Swap dealers would be required to file an exemption application and update the application annually. Exempted swap dealers also would be required to provide monthly reports of their actual risk management needs and maintain records that demonstrate their net risk management needs. The CFTC would publicly disclose the names of swap dealers that have filed for an exemption after a six-month delay.

Today's public meeting is one step in a very important process. Our vote on a proposed rulemaking begins a 90-day public comment period. Many important questions are listed in the proposal, and we are all very interested to hear from the public on these significant issues.

I look forward to hearing from hedgers and speculators, dealers and exchanges and other market participants and economists regarding the proposal and how and if it would improve the functioning of the markets. I am also interested in hearing any changes that they may suggest.

As we vote to on a proposed rulemaking to set position limits in the energy futures and options markets, we also are working with Congress to bring comprehensive regulatory

reform to the over-the-counter derivatives markets. I was pleased that the House included in the recently passed financial reform legislation enhanced authority for the CFTC to set aggregate position limits for over-the-counter derivatives contracts when they perform or affect a significant price discovery function with respect to regulated entities. While Congress continues to work on regulatory reform, it is important that the Commission continue its work under current authority to consider setting energy position limits. The CFTC is working in parallel with the legislative process.

Again, I thank the staff and my fellow Commissioners for all of the preparation that went into today's meeting. I will now entertain a motion that the Commission issue a proposed rule to set position limits for futures and option contracts in the major energy markets and establish consistent, uniform exemptions for certain swap dealer risk management transactions.